IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7373 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEMANT KRISHKANT SHAH

Versus

TEJAS VIDYALAYA

Appearance:

1. Special Civil Application No. 7373 of 2000

MR RK MISHRA for Petitioner No. 1

MR AJ SHASTRI for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 1

MR PRADIP BHATE A.G.P. for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/07/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has

challenged the judgment and order of the Gujarat Secondary Education Tribunal [hereinafter referred to as "the Tribunal"] dated 4th July, 2000 in application no. 146 of 1999 whereby, the Tribunal has partly allowed the application and prayer for payment of salaries as per rules was granted and prayer for regularization and against the termination was rejected.

2.0. The facts of the case are that pursuant to the advertisement dated 9th April, 1994 published in the Indian Express, inviting applications for the post of teachers in the respondent - school, the petitioner had applied for the same. After following due procedure, the petitioner vide order dated 11th June, 1996 (anneuxre-C) was appointed as Activity teacher in the respondent - school in the primary section on part time basis at a consolidated salary of Rs.2,200=00 p.m. He was thereafter continued in the service with artificial breaks. It is the case of the petitioner that since he demanded the salary as per the Government Rules and Regulations, his service was terminated by the respondent - school.

2.1. Being aggrieved by the said order of termination, the petitioner approached the Gujarat Secondary Education Tribunal, wherein, stay was granted against the termination of service. It is the say of the petitioner that since, he was not appointed as per the procedure prescribed under the Statute, the Tribunal declined to grant the prayer for regularization. It is the case of the petitioner that the Tribunal has not considered the authorities cited by the learned advocate for the petitioner. It is also contended that the respondent-school has terminated his service without following the procedure. Hence, he has approached this Court by way of this petition.

2.2. As against that the respondent-school has filed their reply and has contended that since it was extra activity, the teachers were appointed purely on ad-hoc basis. It was also contended that the activity which was carried out by the petitioner was neither within the purview of the syllabus nor the teachers who are appointed on ad hoc basis for this specific activity are in the set up or strength of the teaching staff and these teachers were appointed purely on ad hoc basis for this kind of activity. The petitioner has nothing to do with the teaching strength of the institution or with regular teachers in the respondent school.

2.3. It was also contended that the tenure of the

petitioner was fixed as long as the course was continued and the petitioner was continued upto this activity period. It is the case of the respondent - school that they have regularly paid the honorarium of Rs.3,500=00 through bank and there is no dispute with respect to the payment made through the bank. It is also contended by the petitioner that other teachers were paid on the same basis.

3.0. I have carefully gone through the record of this petition and also the judgment and order of the Tribunal. In my opinion, the findings given by the Tribunal are just and proper. The Tribunal was justified in observing that if the post of teacher in S.U.P.W. is available in the secondary set-up and if the qualification of Diploma in Electrical Engg. is the prescribed qualification for the said post, then the petitioner would be entitled for the salaries prescribed for that post by the Government. It is directed that the respondent - school shall pay the said salaries for the period for which the petitioner has worked even on the principles of quantum meriuit by deducting the amount which the school has already paid to the petitioner. However, it is made clear that since the petitioner was not appointed after following the procedure under Section 35 of the Secondary Education Act, the petitioner was not entitled for protection under Section 36 of the Secondary Education Act.

4.0. Looking to the facts and circumstances of the case and the conclusion arrived at by the Tribunal, no interference is called for under Article 227 of the Constitution of India, Hence, the petition is dismissed. Rule is discharged with no order as to costs.

4.1. However, it will be open for the petitioner to make an application to the respondent - school, requesting to engage him as and when the work is available. If such an application is made, the respondent - school will consider the case of the petitioner sympathetically and will try to absorb the petitioner in the vacancy which is available in the respondent - school.

[K.S. JHAVERI, J.]

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